

§ 21.326

38 CFR Ch. I (7–1–08 Edition)

(v) Immediate family or financial obligations beyond the control of the veteran which are found by VA to require the veteran to suspend pursuit of the rehabilitation program;

(vi) Discontinuance of the course by the educational institution;

(vii) In the first instance of withdrawal on or after June 1, 1989 by a program participant from a course or courses with respect to which such veteran has been paid subsistence allowance under the provisions of § 21.260(b), mitigating circumstances shall be considered to exist with respect to courses totaling not more than six semester hours or the equivalent thereof;

(viii) Difficulties in obtaining child care or changes in such arrangements which are beyond the control of the program participant and which require interruption of the rehabilitation program is order for the participant to provide or arrange for such care.

(Authority: 38 U.S.C. 3680(a))

(j) *Severance of service-connection.* Last day of the month in which the severance becomes final.

(Authority: 38 U.S.C. 5113)

(k) *Fraud.* The later of the following dates:

(1) The beginning date of the award of subsistence allowance, or

(2) The day preceding the date of the fraudulent act.

(Authority: 38 U.S.C. 6103(a))

(1) *Error—(1) Payee error.* Effective date of the award of subsistence allowance or day preceding the act, whichever is later, but not prior to the date the veteran's entitlement ceases, on an erroneous award based on an act of commission or omission by a payee with his or her knowledge.

(2) *Administrative error.* Except as provided in paragraph (j) of this section, date of last payment on an erroneous award based solely on administrative error or an error in judgment by a VA employee.

(m) *Treasonable acts, subversive activities.* The later of the following dates:

(1) Beginning date of the award of subsistence allowance, or

(2) Day preceding the date of commission of the treasonable act or subversive activities for which the veteran is convicted.

(Authority: 38 U.S.C. 5113)

(n) *Incarceration in prison or jail—(1) Felony conviction.* If a veteran's subsistence allowance must be reduced because of incarceration for a felony conviction under provisions of § 21.276, his or her rate of payment will be reduced the later of:

(i) The date of his or her incarceration in a prison or jail; or

(ii) The commencing date of his or her award as determined by § 21.322.

(2) *Halfway house or work-release program.* The subsistence allowance of a veteran in a halfway house or work release program as a result of conviction of a felony will not be reduced under the provisions of § 21.276 the date on which the Federal Government or a State or local government pays all of the veteran's living expenses.

(Authority: 38 U.S.C. 3108(g))

(o) *Specialized rehabilitation facility.* Date payment for room and board by VA begins, reduce the rate paid to the amount payable for dependents.

(Authority: 38 U.S.C. 3108(i))

(p) *Termination of subsistence allowance while hospitalized at VA expense.* Date before the beginning date of the increased disability compensation award, which results in a reduced subsistence allowance under the provisions of § 21.266.

(Authority: 38 U.S.C. 3108(h))

[49 FR 40814, Oct. 18, 1984, as amended at 51 FR 22808, June 23, 1986; 51 FR 25525, July 15, 1986; 55 FR 48843, Nov. 23, 1990]

§ 21.326 Authorization of employment services.

(a) *General.* Authorization of employment services shall be based upon the services identified and goals established in an IEAP (Individualized Employment Assistance Plan) under provisions of § 21.88. The effective dates for the commencement, or termination of

Department of Veterans Affairs

§ 21.332

such services will be determined under this section.

(Authority: 38 U.S.C. 3117(a))

(b) *Commencing date.* The commencing date authorizing a period of employment services will be the later of:

- (1) The date following completion of the period of rehabilitation to the point of employability; or
- (2) The date of the original IEAP.

(Authority: 38 U.S.C. 3107, 3117(a))

(c) *Termination of the authorization of employment services.* Authorization for employment services will be terminated the earliest of:

- (1) The last day employment services are provided under the terms of an IEAP when employment services are interrupted, discontinued, or the veteran is rehabilitated;
- (2) The date the authorization is found to be erroneous because of an act of omission or commission by the veteran, or with his or her knowledge;
- (3) The last day of the month in which severance of service connection becomes final;
- (4) The day preceding the date of a fraudulent act;
- (5) The date preceding the commission of a treasonable or subversive act for which the veteran is convicted.

(Authority: 38 U.S.C. 3108, 5113)

§ 21.328 Two veteran cases—dependents.

If both partners in a marriage are veterans, and if each is receiving either subsistence allowance for a vocational rehabilitation program or an educational assistance allowance under another VA program, each is entitled to receive the additional allowances payable for each other and for their children.

(Authority: 38 U.S.C. 3108(a))

§ 21.330 Apportionment.

(a) *General.* Where in order, VA will apportion subsistence allowance in accordance with § 3.451 of this title, subject to the limitations of § 3.458 of this title. If the veteran is in receipt of ben-

efits at the Chapter 30 rate, VA will not apportion these benefits.

(Authority: 38 U.S.C. 5307(c))

(b) *Effective date.* The effective date of apportionment will be as prescribed in § 3.400(e) of this title.

(Authority: 38 U.S.C. 5307(c))

(c) *Child adopted out of family.* Where evidence establishes that a veteran is the natural parent of a child or children legally adopted outside of the veteran's family, VA will apportion in favor of the child or children only that additional amount of subsistence allowance payable on account of the existence of the child or children. The veteran is not entitled in his or her own right to the additional amount of subsistence allowance payable for the child because of the existence of the child unless the veteran is contributing to the child's support.

(Authority: 38 U.S.C. 5307(c))

(d) *Veteran convicted of a felony.* The subsistence allowance of a veteran in a rehabilitation program after October 17, 1980, may not be apportioned if the veteran is incarcerated because of conviction for a felony.

(Authority: 38 U.S.C. 3108(g))

[49 FR 40814, Oct. 18, 1984, as amended at 54 FR 4284, Jan. 30, 1989; 57 FR 57108, Dec. 3, 1992]

§ 21.332 Payments of subsistence allowance.

(a) *Eligibility.* At the end of the month, VA shall pay to an eligible veteran enrolled in a rehabilitation program, subsistence allowance at the rates specified in § 21.260 for the type of program pursued during the month, unless advance payment is approved. VA will continue payments during those intervals described in § 21.270.

(Authority: 38 U.S.C. 3108)

(b) *Advance payment criteria.* VA will make an advance payment of subsistence allowance only when:

- (1) The veteran specifically requests an advance payment; and